

EXHIBIT A

BROWN RUDNICK LLP
David J. Molton, #262075
dmolton@brownrudnick.com
Seven Times Square
New York, NY 10036
Telephone: (212) 209-4800
Facsimile: (212) 209-4801

BROWN RUDNICK LLP
Stephen R. Cook, #204446
scook@brownrudnick.com
2211 Michelson Drive, 7th Floor
Irvine, CA 92612
Telephone: (949) 752-7100
Facsimile: (949) 252-1514

Attorneys for Nobuaki Kobayashi, in his
capacity as the Civil Rehabilitation Trustee and
Foreign Representative of MtGox Co., Ltd., a/k/a
MtGox KK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

United States of America,

Plaintiff,

vs.

Approximately 69,370 Bitcoin (BTC), Bitcoin
Gold (BTG) Bitcoin SV (BSV) and Bitcoin
Cash (BCH),

Defendants.

Nobuaki Kobayashi, as Chapter 15 Trustee
and Foreign Representative of Japanese
Second Rehabilitation Proceedings of MtGox
Co., Ltd,

Claimant.

Civil Action No.3:20-cv-07811-RS

**VERIFIED ANSWER TO FIRST
AMENDED VERIFIED COMPLAINT
FOR FORFEITURE *IN REM***

Case filed: November 5, 2020

FAC Filed: November 20, 2020

Trial Date: TBD

DEMAND FOR JURY TRIAL

1 Claimant Mr. Nobuaki Kobayashi, as Trustee and Foreign Representative (“**Claimant**”) in the
 2 Second Rehabilitation Proceedings of MtGox Co., Ltd. (“**MtGox**” or the “**MtGox Estate**”),¹ by and
 3 through his undersigned counsel, hereby files his verified answers and affirmative defenses to
 4 Plaintiff’s first amended verified complaint (“**Complaint**”), Docket No. 8, filed on November 20,
 5 2020:
 6

7 **NATURE OF THE ACTION**

8 1. This paragraph does not contain any substantive allegations requiring a response. To
 9 the extent that a response is required, Claimant admits that this is a judicial, *in rem*, forfeiture action.
 10 Claimant further admits that the United States alleges herein to have seized approximately
 11 69370.22491543 in Bitcoin (BTC), Bitcoin Gold (BTG), Bitcoin SV (BSV), and Bitcoin Cash (BCH)
 12 from 1HQ3Go3ggs8pFnXuHVHRytPCq5fGG8Hbhx (the “Property”). Claimant denies sufficient
 13 knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 1 of the
 14 Complaint. Claimant believes that Claimant has a legitimate interest in the Property and denies those
 15 interests are subject to forfeiture in this action.
 16

17 **JURISDICTION AND VENUE**

18 2. This paragraph consists of legal conclusions to which no response is required. To the
 19 extent a response is required, Claimant denies that this Court has Jurisdiction over the defendant
 20 property as alleged in the Complaint.
 21

22 3. This paragraph consists of legal conclusions to which no response is required. To the
 23 extent a response is required, Claimant denies that venue is proper in the Northern District of
 24

25 ¹ The Japanese Second Rehabilitation Proceedings have been recognized as a “Foreign Main
 26 Proceeding” by the U.S. Bankruptcy Court for the Northern District of Texas. Further, the
 27 Northern District of Texas has granted the Foreign Representative’s verified petition for
 28 recognition and Chapter 15 relief. *See* [Dkt. No. 151], Case 14-31229-sgj15 (6/19/14), as modified
 on December 11, 2018 [Dkt No. 194].

1 California because the Plaintiff received a digital transfer of the Defendant Bitcoin while in the
2 Northern District of California, for purposes of seizure, as alleged in the Complaint.

3 4. This paragraph consists of legal conclusions to which no response is required. To the
4 extent a response is required, Claimant denies that intra-district venue is proper in the San Francisco
5 Division within the Northern District of California, as alleged in the Complaint.
6

7 **PARTIES**

8 5. Claimant admits that Plaintiff is the United States of America as alleged in paragraph 5
9 of the Complaint.

10 6. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
11 allegations in paragraph 6 of the Complaint.

12 7. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
13 allegations in paragraph 7 of the Complaint.
14

15 8. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
16 allegations in paragraph 8 of the Complaint.

17 9. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
18 allegations in paragraph 9 of the Complaint.

19 10. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
20 allegations in paragraph 10 of the Complaint.
21

22 11. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
23 allegations in paragraph 11 of the Complaint.

24 12. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
25 allegations in paragraph 12 of the Complaint.

26 13. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
27 allegations in paragraph 13 of the Complaint.
28

1 14. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
2 allegations in paragraph 14 of the Complaint.

3 15. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
4 allegations in paragraph 15 of the Complaint.

5 16. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
6 allegations in paragraph 16 of the Complaint.

7 17. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
8 remaining allegations in paragraph 17 of the Complaint.

9 18. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
10 allegations in paragraph 18 of the Complaint.

11 19. Claimant admits that according to the public blockchain the Property remained in the
12 1HQ3 account until November of 2020. Claimant denies sufficient knowledge to form a belief as to
13 the truth or falsity of the remaining allegations in paragraph 19 of the Complaint, including footnote
14 No.1.

15 20. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
16 allegation in paragraph 20 of the Complaint that the government searched for and observed a specific
17 balance in the 1HQ3 wallet at some point prior to the Government's seizure. Claimant admits the
18 remaining allegations in paragraph 20 of the Complaint.

19 21. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
20 allegations in paragraph 21 of the Complaint.

21 22. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
22 allegations in paragraph 22 of the Complaint.

23 23. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the
24 allegations in paragraph 23 of the Complaint.

24. Claimant admits that Plaintiff received a digital transfer delivering the Property. Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in paragraph 24 of the Complaint.

VIOLATION

Claimant incorporates by reference his answers to the allegations in paragraphs 1 through 24 above.

With respect to the five unnumbered allegations in the Complaint, the allegations in these paragraphs contain proposed findings of law, legal conclusions, and a prayer for relief to which no response is required. To the extent a response is required, Claimant denies sufficient knowledge to form a belief as to the truth or falsity of the allegations in such paragraphs. Furthermore, Claimant believes, upon information and belief, that Claimant has a legitimate interest in the Property and denies those interests are subject to forfeiture in this action. Claimant further denies the alleged crime of Computer Hacking is properly pleaded in the amended complaint for *in rem* forfeiture. Unless specifically admitted by Claimant all allegations are denied, and Claimant avers that Claimant is the proper vehicle through which any property of the MtGox Estate is to be collected.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The amended complaint fails to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6).

SECOND AFFIRMATIVE DEFENSE

(Innocent Owner)

Claimant is an innocent owner of a portion of the Property pursuant to 18 U.S.C. § 983 and other applicable law.

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Constructive Trust)**

3 Claimant has the right to possess, and an interest in, a portion of the Property,
4 which right is traceable to the Property, and which Property was stolen or otherwise
5 wrongfully acquired by Individual X or another unknown third party.
6

7 **FOURTH AFFIRMATIVE DEFENSE**

8 **(Jurisdiction)**

9 The Court lacks jurisdiction over the Property, as alleged in Plaintiff's *in rem*
10 forfeiture claim.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 **(Venue)**

13 The Venue chosen by Plaintiff is neither proper nor convenient.
14

15 **SIXTH AFFIRMATIVE DEFENSE**

16 **(Eighth Amendment)**

17 Forfeiture of the defendant property would constitute a violation of the Eighth Amendment to
18 the United States Constitution.

19 **SEVENTH AFFIRMATIVE DEFENSE**

20 **(Subsequently Discovered Defenses and Reservation)**

21 Claimant may learn of additional facts and defenses during discovery in this matter. Claimant
22 thus reserves his right to amend these answers and the affirmative defenses.
23

24 **PRAYER FOR RELIEF**

25 1. That Plaintiff's prayer for relief in the form of the forfeiture of the Defendant be denied
26 at least with respect to the portion owned by Claimant.
27
28

2. That Claimant be awarded its costs incurred in defending a portion of the Property as permitted by law, including but not limited to reasonable attorney's fees; and.

3. For such other relief as the Court deems proper.

JURY DEMAND

Claimant hereby demands a jury on all triable issues and defenses.

Dated: April 22, 2021

Respectfully submitted,

BROWN RUDNICK LLP

By: 

David J. Molton
Seven Times Square
New York, New York 10036
Telephone (212) 209-4800
Fascimile (212) 209-4801

and

Stephen R. Cook
2211 Michelson Drive
Irvine, California 92612
Telephone: (949) 752-7100
Fascimile: (949) 252-1514

*Counsel for Nobuaki Kobayashi, in his
capacity as the Civil Rehabilitation Trustee and
Foreign Representative of MtGox Co., Ltd., a/k/a
MtGox KK*